

Alabama Rules of Criminal Procedure

Rule 32. Post-conviction remedies.

Committee Comments Effective December 1, 1997

In *Cantu v. State*, 660 So.2d 1026 (Ala.1995), the Alabama Supreme Court clarified its holding in *Ex parte Rivers*, 597 So.2d 1308 (Ala.1991). The Court in *Cantu* held that the failure of a trial court to properly advise a defendant of the consequences of a guilty plea is not a jurisdictional defect that may be raised at any time, but that it can be raised in a timely filed Rule 32 petition. The Court stated that although the failure to inform a defendant of the proper minimum and maximum sentences that can be imposed is not a jurisdictional defect, such a failure does raise a question of the voluntariness of a guilty plea based on that misinformation. Because the failure goes to the voluntariness of the plea, the plea is subject to collateral challenge, under *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1729, 23 L.Ed.2d 274 (1969). The Court addressed challenges to the voluntariness of guilty pleas:

“Even though a defendant could file a motion under the provisions of Rule 14, [Alabama Rules of Criminal Procedure,] to withdraw a plea of guilty and could appeal a trial court’s ruling on the motion, the defendant would not be precluded from raising, in a timely filed post-conviction proceeding, the question of the voluntariness of the plea.”

660 So.2d at 1029.

If a trial judge fails to strictly comply with the procedural requirements for the entry of a guilty plea (e.g., fails to properly advise the defendant of the minimum and maximum sentences the defendant could receive), the defendant may seek to withdraw the plea of guilty and give the trial court an opportunity to rule on any alleged error and thereby preserve error in the record for appeal, or the defendant can raise the question of noncompliance in a timely filed post-conviction proceeding.